In the High Court of Uttaranchal at Nainital.

Criminal Revision No. 41 of 2004

Suresh Rathore and four others …Revisionists.

Vs.

State of Uttaranchal and two others …Respondents.

Hon'ble Irshad Hussain, J.

Heard Sri Rajendra Singh learned counsel for the revisionists and the learned A.G.A.

Having heard the learned counsel the service on private respondent no.3 is dispensed with.

This is a revision under section 397/401 of the Code of Criminal Procedure (for short 'Code') with a prayer to quash and set aside the order dated 6-1-2004 passed by C.J.M., Haridwar in criminal case no.170/2004 whereby final report submitted in case crime no. 165/2002 was rejected and cognizance of the offences under sections 452, 323, 504 and 506 I.P.C. against the revisionists was taken and a direction was given to register a state case against them. Summons were also directed to be issued against them for their appearance on the date fixed.

The learned counsel for the revisionists submitted that the impugned order is illegal and without jurisdiction because the learned C.J.M. had while passing the impugned order considered and took into account the affidavits of three witnesses namely Atar Singh, Satpal and Jaipal in support of the allegations of the complainant and to form an opinion that prima facie evidence in regard to the commission of the crime was available against the revisionists although legally the learned Magistrate was not obliged to consider the same when final report had been submitted by the police. Learned counsel also submitted that when final report had been submitted four options were available to the learned C.J.M. and these were as under:-

(1) The learned C.J.M. may agree with the conclusion arrived at after investigation by the police and he may accept the final report after giving opportunity to the complainant; or

(2) The learned C.J.M. may take cognizance under section 190(1)(b) of the 'Code' and summon the accused on the basis of the material and evidence collected in the investigation; or

(3) He may direct further investigation, if satisfied as is contemplated in sub-section (8) of section 173 of the 'Code'; or

(4) He may proceed to take a cognizance against the accused after following the procedure as provided under Chapter XV of the 'Code' and in the process to consider the evidence to be recorded under section 200 and 202 of the 'Code' and then take a decision accordingly.

Considering the only above options available the impugned order would have been justified only of the learned C.J.M. had proceeded to take cognizance against the revisionists on the basis of his satisfaction based upon the material collected during the investigation by the police and not otherwise. In the instant case the learned C.J.M. has considered the affidavits of the three witnesses furnished by the complainant and the satisfaction arrived by the learned C.J.M. was based on the averments of these affidavits also and therefore in a situation like this the learned Magistrate was legally obliged to have the fourth option mentioned above. In taking that option the learned Magistrate may have taken cognizance of the offences against the revisionists upon the original complaint or protest petition treating the same as complaint and proceed to record the statements under section 200 and 202 of the 'Code' and thereafter consider the same to satisfy himself as to whether there was prima facie case against the revisionists to summon them and stand trial.

For the reasons aforesaid it is obvious that the learned C.J.M. has had no option to consider the additional evidence in the form of the affidavits and then to take the cognizance of the offence against the revisionists and directing the case to be treated as state case. The impugned order dated 6.1.2004 therefore can not legally be sustained and need to be quashed.

The revision is accordingly allowed. The learned C.J.M. is directed to reconsider the matter in the light of the observations made above and to proceed accordingly under chapter XV of the 'Code'.

(Irshad Hussain, J.)

Dated: 23-3-2004

ISB